IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5076 OF 2005

Dr. Anand Gopal Babar. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.
....
Mr. S.G. Kudle for the Petitioner.
Mr. C. R. Sonawane, AGP for Respondent Nos.1 and 2.
Mr. Machindra Patil for Respondent No.3.
.....
CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

March 21, 2006.

P.C.

The Petitioner who claims to be the President of Vikas Education Society, Chopadi, Taluka Sangola, District Solapur, has filed this petition whereby he has challenged the authority of Respondent Nos.3 and 4 to appoint Respondent Nos.5 to 11 as teachers and other staff in the Secondary School run by the Trust. The Petitioner has also challenged the approval of the said appointments granted by the Education Officer (Secondary), Zilla Parishad, Solapur.

2. We have heard the Learned Counsel for the parties at length. We have also gone through the affidavit and the rejoinder

filed. The petition is required to be dismissed on more than one grounds, namely, the Petitioner has suppressed the fact of availing of alternate remedy of filing Civil Suit and the directions issued thereon. The Petition is filed after long delay after the approval was granted in the year 1997-98. Finally, proceedings with regard to managing the affairs of the Trust between the Petitioner and Respondent Nos.3 and 4 are pending before the Charity Commissioner; wherein disputes on facts can be decided.

3. It is not in dispute that the Petitioner had filed Regular Civil Suit No.31 of 2003 in the Court of the Learned Civil Judge, Senior Division, Pandharpur, restraining Defendant Nos.1 and 2 to appoint the teachers and other staff members without the consent of the management of the Plaintiff-Education Society and no such staff member should be permitted to participate in the affairs of the school of the Plaintiff- Education Society. The Learned Trial Judge vide his order dated 30th April 2004 rejected the said application. The Petitioner has not challenged the said order either by filing Revision or Appeal before the competent Court. The Petitioner having failed to take recourse to the remedy available under the law, the petition itself can be dismissed on this

ground as in our opinion, the said order has become final. The Petitioner has tried to explain the said situation by amending the petition wherein he has stated that as a declaration was not sought for in the suit, the Petitioner has withdrawn the said suit. That is neither here nor there as admittedly, the Petitioner has failed to obtain any relief in the suit filed by him. Merely because the Petitioner has made a number of applications/representations till 2002 as can be seen from the averments made in the petition, that would not justify for approaching this Court by filing a petition in the year 2005 against the appointments of Respondent Nos.5 to 11 made in the year 1997-98. Thus, inordinate delay of these years itself is a ground for dismissal of the petition.

4. The dispute between the Petitioner and Respondent Nos.3 and 4 which is going on before the Charity Commissioner claiming their rights to run the Trust, cannot nullify or adversely affect appointments of Respondent Nos.5 to 11 made long before. In view of the fact that the appeal filed by the Petitioner before the Charity Commissioner is pending where all disputes between the Petitioner and Respondent Nos.3 and 4 can be decided, we do not express any opinion in the matter. In any case, unless the

Petitioner succeeds before the Charity Commissioner, in our opinion, he has prima facie, no locus to file the petition. With the above, we see no merit in this petition which is dismissed.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.